

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

TEXTRON FINANCIAL CORPORATION, :
Plaintiff, :
 :
v. : CA 04-221L
 :
RONALD E. HALE, SR., and :
JENNIFER F. HALE, :
Defendants. :

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge

Before the court is Defendants' Motion to Dismiss for Lack of Personal Jurisdiction ("Motion to Dismiss") (Document #3). Plaintiff has filed an objection. See Plaintiff's Opposition to Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Document #5). This matter has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and D.R.I. Local R. 32(a). The court has determined that no hearing is necessary. For the reasons set forth herein, I recommend that the Motion to Dismiss be denied.

Discussion

This action is based upon an Unconditional and Joint Guaranty (the "Guaranty") executed by Defendants. See Complaint -- Action Upon a Guaranty ("Complaint") (Document #1). In their Motion to Dismiss, Defendants argue, in essence, that they lack the requisite contacts with Rhode Island for this court to exercise jurisdiction over them. See Motion to Dismiss at 1-2. However, the Guaranty contains a provision pursuant to which the guarantors agree to consent, in actions arising out of the Guaranty, to the jurisdiction of the United States District Court

having jurisdiction in Rhode Island. See Complaint, Exhibit A (Guaranty) ¶ 13.¹ Furthermore, it appears that service of the summons and complaint upon Defendants was properly effected. See Document #2 (Returns of Service).

"A party to a contract may waive its right to challenge personal jurisdiction by consenting to personal jurisdiction in a forum selection clause." Inso Corp. v. Dekotec Handelsges, mbH, 999 F.Supp. 165, 166 (D. Mass. 1998)(citing M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 11, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972)). The Court of Appeals for the First Circuit has interpreted a contract provision with language similar to that in the provision at issue here as "an affirmative conferral of personal jurisdiction by consent"² Autoridad de Energia Electrica de Puerto Rico v. Ericcson Inc., 201 F.3d 15, 18 (1st Cir. 2000). The court finds that Defendants, in executing the Guaranty, have consented to jurisdiction in this court and have

¹ The provision states, in relevant part, that

EACH GUARANTOR, TO THE EXTENT THAT THE GUARANTORS MAY LAWFULLY DO SO, HEREBY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF RHODE ISLAND AND OF EACH STATE IN WHICH BORROWER IS NOW OR HEREAFTER MAY BE LOCATED (COLLECTIVELY, THE "DESIGNATED JURISDICTIONS") AND THE UNITED STATES DISTRICT COURTS HAVING JURISDICTION OR SITTING IN THE DESIGNATED JURISDICTIONS ... FOR THE PURPOSE OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THE GUARANTORS' OBLIGATIONS UNDER OR WITH RESPECT TO THIS GUARANTY, AND EXPRESSLY WAIVES ANY AND ALL OBJECTIONS THE GUARANTOR MAY HAVE AS TO VENUE IN ANY OF SUCH COURTS.

Complaint -- Action Upon a Guaranty, Exhibit A (Unconditional and Joint Guaranty) ¶ 13.

² The provision stated: "This contract will be governed and interpreted pursuant to the Laws of the Commonwealth of Puerto Rico and the parties agree to submit to the jurisdiction of the courts of the Commonwealth of Puerto Rico." Autoridad de Energia Electrica de Puerto Rico v. Ericcson Inc., 201 F.3d 15, 18 (1st Cir. 2000).

waived the right to contest it.³ Accordingly, I recommend that the Motion to Dismiss be denied.

Conclusion

Based on the foregoing analysis, I recommend that the Motion to Dismiss be denied. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

David L. Martin
United States Magistrate Judge
August 12, 2004

³ On July 20, 2004, the court directed Defendants to the holding in Autoridad de Energia Electrica de Puerto Rico v. Ericcson Inc., 201 F.3d 15, 18 (1st Cir. 2000), and ordered them to show cause in writing within fifteen days why, in light of that holding, their Motion to Dismiss for Lack of Personal Jurisdiction should not be summarily denied. See Show Cause Order (Document #7). Defendants have not responded to the Show Cause Order.